

The Honorable Stanley A. Bastian

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official  
capacity as President of the United  
States*, et al.,

Defendants.

No. 1:20-cv-03127-SAB

**UNOPPOSED MOTION FOR  
LEAVE TO FILE BRIEF AS AMICI  
CURIAE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION BY  
THE COUNTY OF SANTA CLARA,  
THE CITY OF COLUMBUS, AND  
THIRTY-EIGHT LOCAL AND  
TRIBAL GOVERNMENTS AND  
FOR LEAVE TO FILE BRIEF IN  
EXCESS OF PAGE LIMIT**

**Noted for: September 17, 2020**

## **INTRODUCTION**

The County of Santa Clara and the City of Columbus, together with thirty-eight local and tribal governments (collectively, “*amici*”)<sup>1</sup>, respectfully seek leave of the Court to submit the attached *amici curiae* brief in support of Plaintiffs’ motion for a preliminary injunction. *Amici* further request permission to file their *amici curiae* brief in excess of the page limit. All parties have consented to the filing of the proposed brief, and the parties have stipulated that all briefs of *amici curiae* shall be filed by Friday, September 11, 2020.<sup>2</sup> All parties have further consented to an enlargement of the page limit for the proposed brief to up to 35 pages.

*Amici* are local and tribal governments that administer elections and provide a wide range of essential services that enable residents to live healthy, stable, and productive lives. The reliable and efficient operation of the United States Postal Service (the “USPS” or “Postal Service”) is integral to both functions. Every day, *amici* send and receive millions of pieces of mail: citations, prescription medications, documents for legal process, pension checks, and, now, time-sensitive election

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<sup>1</sup> A full list of *amici* local and tribal governments is attached.

<sup>2</sup> See Docket Entry No. 45 (Aug. 31, 2020).

1 materials. USPS’s operational and policy changes will delay those mailings.<sup>3</sup> And the  
 2 timing of the changes—during a global pandemic and a mere two months before the  
 3 presidential general election—heightens the harms inflicted on *amici*. COVID-19 has  
 4 increased *amici*’s reliance on remote interactions to carry out core functions. Many  
 5 *amici* are mailing ballots to all eligible voters or otherwise are encouraging voters to  
 6 avail themselves of vote-by-mail options to mitigate the challenges of conducting a  
 7 high-turnout election during a global pandemic. Defendants’ actions jeopardize  
 8 *amici*’s critical functions, sow public doubt about mail’s reliability as a means to  
 9 transact with their governments, and undermine the ability of *amici*, and government  
 10 at every level, to serve their constituents. *Amici* therefore have a substantial interest in  
 11 the outcome of this litigation.

## 12 ARGUMENT

13 “[A]ssisting in a case of general public interest” is a “classic role of amicus  
 14 curiae.” *Miller-Wohl Co., Inc. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th  
 15 Cir. 1982). Courts have broad discretion to permit the appearance of amici curiae.

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 17 <sup>3</sup> Those changes include, *inter alia*, reducing the use of extra trips, removing  
 18 mailboxes and mail sorting machines, and prohibiting the use of overtime. *See, e.g.*,  
 19 Catie Edmondson, *DeJoy Defends Postal Changes as Trump Continues to Attack*  
 20 *Voting by Mail*, N.Y. Times (Aug 24, 2020), <https://perma.cc/WH38-G4KZ>.

1 *Pakootas v. Teck Cominco Metals, Ltd.*, 2011 WL 13238552, at \*1 (E.D. Wash. Aug.  
 2 25, 2011). The Court “may grant or refuse leave to the extent it deems the proffered  
 3 information timely, useful or otherwise.” *Id.* Courts should permit an amicus brief  
 4 when “the amicus has unique information or perspective that can help the court  
 5 beyond the help that the lawyers for the parties are able to provide.” *Cnty. Ass’n for*  
 6 *Restoration of Env’t v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash.  
 7 1999); *Feature Realty, Inc. v. City of Spokane*, 2001 WL 36136186, at \*18 (E.D.  
 8 Wash. Aug. 30, 2001).

9 *Amici’s* unopposed motion seeking leave to file should be granted. Without  
 10 question, this is a case of monumental public interest. *See Miller-Wohl Co., Inc.*, 694  
 11 F.2d at 204. Plaintiffs challenge revisions to policies affecting the delivery of mail—a  
 12 function of the federal government dating back to the founding of the republic.  
 13 Reports of problems with USPS mail delivery have climbed in recent weeks, and mail  
 14 delays are having profound consequences for the residents who live in *amici’s*  
 15 communities and for *amici* themselves.<sup>4</sup>

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 17 <sup>4</sup> *See, e.g.,* Megan Leonhardt, *Here’s Who May Be Impacted by the Post Office Slow*  
 18 *Down*, CNBC.com (Aug. 17, 2020), <https://perma.cc/TJ97-TC63>; Todd C. Frankel,  
 19 *Postal Problems Could Continue Despite Suspension of Policies Blamed for Mail*  
 20 *Delays*, Wash. Post (Aug. 19, 2020), <https://perma.cc/L2E2-S8QB>.

1        *Amici*'s proposed brief is submitted within two days of the Plaintiffs' filing of  
 2 their motion for preliminary injunction and is therefore also "timely."<sup>5</sup> *See Pakootas*,  
 3 2011 WL 13238552, at \*1. Further, the proposed submission will amplify the  
 4 presentation of issues before the Court, *see Cmty. Ass'n for Restoration of Env't*, 54 F.  
 5 Supp. 2d at 975, due to *amici*'s role as election administrators and providers of safety-  
 6 net services.<sup>6</sup> Both functions give *amici* a deep and distinctive understanding of the  
 7 effects of the USPS's policy changes, which is useful to the disposition of this case.

8        With respect to the election, the changes will make it more difficult and costly  
 9 for *amici* to administer the presidential general election this fall and may undermine  
 10 the certainty of election results. Because more citizens than previously expected may

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 12 <sup>5</sup> Under Federal Rule of Appellate Procedure 29(a), parties have seven days from the  
 13 date that an appellate brief is filed to submit an amicus brief in support of the party  
 14 filing that brief. Although the Federal Rules of Appellate Procedure do not expressly  
 15 govern the district court, it is instructive here. *See, e.g., Ctr. For Biological Diversity*  
 16 *v. EPA*, 90 F. Supp. 3d 1177 (W.D. Wash. 2015) (looking to the Federal Rules of  
 17 Appellate Procedure for guidance because the Western District of Washington's Local  
 18 Rules do not address briefs submitted by amicus curiae).

19 <sup>6</sup> *See generally* Nat'l Conf. of State Legislatures, *Election Administration at State and*  
 20 *Local Levels* (Feb. 3, 2020), <https://perma.cc/8XN7-D2V9>.

1 now opt to vote in-person due to fears and uncertainty caused by the USPS, *amici*  
2 must change plans and mobilize resources to ensure voters can safely exercise their  
3 fundamental rights. USPS's changes also magnify the challenge posed by the COVID-  
4 19 pandemic to *amici*'s election administration. The proposed amicus brief provides  
5 details from jurisdictions across the country—including many jurisdictions that are not  
6 contained within Plaintiffs' grouping of state and local governments—about these  
7 USPS-caused challenges and their effects on local planning for the election. As a  
8 result, *amici* respectfully seek leave from this Court to exceed the page limit in order  
9 to ensure the Court has the benefit of the breadth of information provided.

10 To that end, an estimated 83 percent of American voters will be eligible to vote  
11 by mail in November.<sup>7</sup> However, USPS's changes have blunted the push to vote by  
12 mail, injecting uncertainty into the planning stages of election administration and  
13 shaking the electorate's confidence in mail-in ballots.<sup>8</sup> With less than two months  
14 until the election, it is *amici* who must now rapidly implement other measures to

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16 <sup>7</sup> Kate Rabinowitz & Brittany R. Mayes, *At Least 83% of American Voters Can Cast*  
17 *Ballots by Mail in the Fall*, Wash. Post (Aug. 20, 2020), <https://perma.cc/C6RX-9CSJ>.

18 <sup>8</sup> Jacob Pramuk, *Fewer Voters Say They're Voting by Mail Amid Uproar Over USPS*  
19 *Changes*, CNBC/Change Research Polls Find, CNBC (Aug. 26, 2020),  
20 <https://perma.cc/TCJ3-WBYG>.

1 account for the possibility that fewer qualified electors will vote by mail than  
2 previously expected. These include measures aimed at ensuring a safe and orderly  
3 operation of in-person voting on Election Day.<sup>9</sup>

4 The proposed brief also amplifies the presentation of the scope of harms, as the  
5 USPS's operational changes have affected *amici*'s provision of safety-net services.  
6 Local governments collect billions of dollars in parking tickets, tax payments, fines,  
7 and user fees through the mail, all of which fund essential services for residents. Many  
8 cities and counties enforce public-safety ordinances through mailed notice violations.  
9 Additionally, local public health agencies provide life-saving prescriptions to their  
10 patients each month through the mail. Policy-induced delays to these operations come  
11 at a huge cost to both *amici* and their residents.

12 In sum, *amici*'s perspective as local and tribal governments offer useful and  
13 timely assistance to the Court. The proposed brief amplifies the presentation made by  
14 Plaintiffs to set out the full scope of effects that emanate from the USPS's operational  
15 changes as this Court considers Plaintiffs' motion for a preliminary injunction. From  
16 the need to abruptly change plans for election administration, to the weakened ability  
17 to provide services to their residents, *amici*'s experiences speak to the significant

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19 <sup>9</sup> See U.S. Ctrs. for Disease Control & Prevention, *Considerations for Election Polling*  
20 *Locations and Voters* (June 22, 2020), <https://perma.cc/3HNL-RQPP>.

1 public interest that would be served by an injunction while the merits of this case are  
2 litigated. *See, e.g., Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087  
3 (2017) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008)).

#### 4 **CONCLUSION**

5 For the foregoing reasons, *amici* request that they be granted leave to file their  
6 proposed brief. While they request that the Court permit their proposed brief to be  
7 filed in excess of the page limit, they will promptly amend the brief should the Court  
8 order it filed without excess pages.

1 Respectfully submitted,

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**CERTIFICATION OF SERVICE**

I hereby certify that on September 11, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

/s/ Ghazal Sharifi

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Dated: September 11, 2020